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Attorneys for Plaintiff PROGRESSIVE WEST  
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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

PROGRESSIVE WEST INSURANCE )  
COMPANY, an Ohio corporation, )  
Plaintiff, )  
vs. )  
BUN BUN TRAN, LEONEL )  
ARRELLANO, )  
Defendants. )

**CASE NO. 07 - CV 1999 JAH (POR)**  
**APPLICATION FOR DEFAULT**  
**JUDGMENT BY COURT AGAINST**  
**DEFENDANT LEONEL**  
**ARRELLANO; DECLARATION OF**  
**RONALD P. FUNNELL**

Date: June 2, 2008  
Time: 2:30 p.m.  
Ctmm: 11  
940 Front Street  
San Diego, CA 9210

**TO DEFENDANT LEONEL ARRELLANO AND HIS ATTORNEYS OF  
RECORD:**

**PLEASE TAKE NOTICE THAT** on June 2, 2008, at 2:30 p.m. or as soon  
thereafter as this matter may be considered by the above entitled Court, located at 940  
Front Street, San Diego, California, Plaintiff Progressive West Insurance Company  
("Progressive") will present its application for a default judgment against defendant  
Leonel Arrellano. The clerk has previously entered the default of said defendant on  
April 9, 2008.

At this time Plaintiff requests the Court to enter a judgment of default based on  
the Declaration of Ronald P. Funnell and the following matters:

1           1. Defendant Leonel Arrellano is not a minor or incompetent person or in  
2 military service or otherwise exempted under the Soldiers' and Sailors' Civil Relief  
3 Act of 1940; and

4           2. Defendant Leonel Arrellano was served with the summons and the  
5 complaint on November 17, 2007. Said defendant has not appeared in this action, nor  
6 answered the complaint.

7           3. Plaintiff is entitled to judgment against said defendant on account of the  
8 claims pleaded in the complaint, to wit:

9           Plaintiff Progressive insured Defendant Leonel Arrellano for the policy period  
10 May 30, 2006 to November 30, 2006 under California Motor Vehicle Policy number  
11 16558999-00. On November 18, 2006, Defendant Arrellano collided with Defendant  
12 Bun Bun Tran's automobile, causing Mr. Tran serious injuries from which he remains  
13 comatose.

14           Following the accident, Mr. Arrellano was arrested for driving under influence  
15 of alcohol, driving without a license and fleeing the scene of the accident. The  
16 accident report assigned fault to Mr. Arrellano. In June 2007, he was sentenced to 6  
17 years in a California prison.

18           On or about January 26, 2007, attorney Anh Quoc Duy Nguyen wrote  
19 Progressive demanding that Progressive tender its liability policy limits within fifteen  
20 (15) days. (A copy of Attorney Nguyen's demand letter is attached to the Funnell  
21 Declaration as **Exhibit 1.**)

22           Plaintiff is informed and believes that at the time Attorney Nguyen sent his  
23 January 26, 2007 letter, he was not legally representing Bun Bun Tran, but, instead,  
24 was representing Mr. Tran's mother. Plaintiff is further informed and believes that  
25 Mr. Tran's mother was not then guardian ad litem of Mr. Tran. As a result, Attorney  
26 Nguyen had no legal authority to settle the claims of Mr. Tran, nor did he have legal  
27 authority to release claims of Mr. Tran against any tortfeasor.

28           Attorney Nguyen's demand did not offer a release or dismissal in exchange for

1 payment of the insurance benefits, but was subject to the condition precedent “of  
2 convincing [Nguyen] there are no other responsible parties, whether insured or not,  
3 causing this accident. If I am not convinced, I will state as much in a letter and there  
4 will be no settlement.”

5 It was legally and factually impossible to convince Attorney Nguyen that there  
6 were no other responsible parties for causing this accident, given the facts and  
7 circumstances of the accident, and that Patricia Cole, in fact, paid Bun Bun Tran  
8 \$300,000 to settle the liability claim against her arising from this accident in July  
9 2007.

10 As a result of the above condition precedent, attorney Nguyen’s demand was  
11 not an offer to settle within the policy’s limits. Rather, the condition precedent of  
12 “convincing” Nguyen was outside of the policy and its stated limits.

13 Nevertheless, on February 2, 2007, Progressive sent a letter to Attorney  
14 Nguyen offering its policy limits, within 7 days of the demand. (A true and correct  
15 copy of this letter is attached to the Funnell Declaration as **Exhibit 2**). Attorney  
16 Nguyen rejected the offer and referred Mr. Tran’s claim to attorney Christopher  
17 Angelo.

18 On or about May 8, 2007, Attorney Angelo filed a lawsuit on behalf of Mr.  
19 Tran against Mr. Arrellano alleging causes of negligence and negligence per se  
20 regarding the above mentioned automobile accident. It is clear from the  
21 correspondence, discovery and pleadings filed in that case that Mr. Angelo intended  
22 to obtain a judgment against Mr. Arrellano and then sue Progressive for breach of  
23 contract and breach of covenant of good faith and fair dealing for failing to settle Mr.  
24 Tran’s claim within policy limits.

25 4. Plaintiff Progressive is entitled to a declaratory judgment against  
26 defendant Arrellano stating the following rights and duties of the parties under the  
27 involved policy of insurance:

28 That in handling Leonel Arrellano’s claim arising from the November 18, 2006

1 motor vehicle accident, Progressive has discharged its obligations under the insurance  
2 policy and in accord with California law; and that its conduct in response to the  
3 January 26, 2007 letter from Attorney Nguyen was reasonable, was not in bad faith,  
4 and did not eliminate or jeopardize the \$15,000 policy limits available under the  
5 Progressive California Motor Vehicle Policy number 16558999-00 issued to insured  
6 defendant Leonel Arrellano.

7 The above stated facts are set forth in the accompanying declaration of Ronald  
8 P. Funnell, filed herewith.

9  
10 DATED: April\_\_\_\_, 2008

ROBIE & MATTHAI  
A Professional Corporation

11  
12 By: \_\_\_\_\_  
13 JAMES R. ROBIE  
14 KYLE KVETON  
15 RONALD P. FUNNELL  
16 Attorneys for Plaintiff PROGRESSIVE WEST  
17 INSURANCE COMPANY  
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**DECLARATION OF RONALD P. FUNNELL IN SUPPORT**  
**OF REQUEST TO ENTER DEFAULT JUDGMENT**

I, Ronald P. Funnell, declare as follows:

1. I am over 18 years old and am an attorney licensed to practice law in the state of California and am an attorney with the law firm of Robie and Matthai, attorneys representing Plaintiff Progressive West Insurance Company in this case. The facts stated in this declaration are from my own personal knowledge and I would and could testify competently to these facts if called to do so.

2. Defendant Leonel Arrellano was served with the Summons and the Complaint on November 17, 2007.

3. Defendant Leonel Arrellano has not appeared in this action and has not responded to the complaint within the 20-day time period provided by FRCP 12(a)(1).

4. Defendant Leonel Arrellano is not a minor nor an incompetent person.

5. Defendant Leonel Arrellano is not a member of the military or otherwise exempted under the Soldiers' and Sailors' Civil Relief Act of 1940.

6. Defendant Leonel Arrellano would not be able to attend any hearing regarding this matter because he is presently incarcerated at Sierra Conservation Center, 5100 O'Byrnes Ferry Road, Jamestown, CA. Mr. Arrellano is not represented by counsel in this action.

7. On or about January 26, 2007, attorney Anh Quoc Duy Nguyen wrote to Progressive demanding that Progressive pay its \$15,000 policy limits within 15 days. A true and correct copy of Nguyen's letter is attached as **Exhibit 1**.

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**PROOF OF SERVICE**

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 500 South Grand Avenue, 15th Floor, Los Angeles, CA 90071-2609.

On April 23, 2008, I served the foregoing document(s) described as:

**APPLICATION FOR DEFAULT JUDGMENT BY  
COURT AGAINST DEFENDANT LEONEL  
ARRELLANO; DECLARATION OF RONALD P.  
FUNNELL**

on all interested parties in this action by placing a true copy of each document, enclosed in a sealed envelope addressed as follows:

**Attorneys for Defendant, Bun Bun  
Tran:**

Christopher E. Angelo, Esq.  
Joseph Di Monda, Esq.  
ANGELO & DI MONDA LLP  
1721 No. Sepulveda Boulevard  
Manhattan Beach, CA 90266-5014  
Telephone: (310) 939-0099  
Facsimile: (310) 939-0023

**Defendant Leonel Arrellano, In Pro  
Per:**

Leonel Arrellano, Inmate #F77654  
c/o Division of Adult Operations  
Sierra Conservation Center  
5100 O'Byrnes Ferry Road  
Jamestown, CA 95327

**(X) BY MAIL:** as follows: I am "readily familiar" with the firm's practice of collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date in the United States mail at Los Angeles, California.

**(X) BY E-SERVICE:** I caused the above-referenced document(s) to be electronically served on all counsel of record through the Court's CM/ECF filing and service system.

**(X) (Federal)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 23, 2008, at Los Angeles, California.

\_\_\_\_\_  
Windy Gale Tyler